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U.S. Congress. House.

Select committee on
Smithsonian institu-
tion.

Report of Hon. William
H. Witte... 1855

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REPORT

OF

HON. WILLIAM H. WITTE,

FROM THE

Committee of the House of Representatives,

TO WHICH WAS REFERRED

THE LETTER OF THE HON. RUFUS CHOATE,

ON THE

SMITHSONIAN INSTITUTION.

WASHINGTON:
A. O. P. NICHOLSON, PRINTER.
1855.

SMITHSONIAN INSTITUTION AND HON. RUFUS CHOATE.

MARCH 3, 1855.—Laid upon the table and ordered to be printed.

Mr. WITTE, from the Select Committee, made the following

REPORT.

The Select Committee to whom was referred the letter of the Hon. Rufus Choate, resigning the office of regent of the Smithsonian Institution, also the resolution thereon to inquire whether the Smithsonian Institution has been managed and its funds expended in accordance with the law establishing it, and whether any additional legislation be necessary to carry out the design of its founders, report :

[Mr. TAYLOR concurring, and Mr. PURYEAR and Mr. WELLS, although not dissenting from all the views, preferred not to sign either this report or the report made by Mr. UPHAM alone :]

That they have made a patient examination of the institution, and have concluded that there is no just cause of complaint against the regents or the secretary, in regard to the construction of the act of Congress establishing the institution, and the plan of organization adopted by the regents, or the manner in which its affairs have been administered. The subjects included in the resolution may be appropriately arranged under the following heads :

1. The proper construction of the act of Congress establishing the institution.

2. The plan of organizing and administering the affairs of the institution, adopted by the regents in pursuance of the law.

3. The question whether any new legislation is necessary.

4. The administration of this plan by the regents and secretary.

Of these the committee will treat in the order in which they are stated.

1. *The proper construction of the act of Congress.*

The question whether the bequest of Mr. Smithson should be applied chiefly to the formation of a great national library, or to researches for the *increase of knowledge*, and the publication and circulation of their results, for its *diffusion among men*, divided the opinion of the members of the Board of Regents at their first meeting. These differences of opinion were compromised at the organization of the institution by a resolution, which the regents have lately repealed.

That resolution provided, prospectively, and, on a contingency, which may be said to have just occurred, (the completion of the Smith-

sonian building,) for an equal division of the fund committed to the care of the Board of Regents between the two objects above stated—a national library, museum, and gallery of art on the one hand, and researches, publications and lectures on the other.

This compromise resolution has been repealed by the Board of Regents during their present session, and instead of it they have adopted the following :

“*Resolved*, That hereafter the annual appropriations shall be apportioned specifically among the different objects and operations of the institution in such manner as may, in the judgment of the regents, be necessary and proper for each, according to its intrinsic importance, and a compliance in good faith with the law.”

The adoption of this resolution was followed by the resignation of Mr. Choate, one of the regents, and in his letter of resignation, addressed to the Speaker of the House, he assumes that the act of Congress presented a rule of appropriation which is set aside by the resolution. Whether the Board of Regents or Mr. Choate are right in this respect must be determined by a reference to the act of Congress.

When it had created the institution, given it a corporate name, invested it with certain powers, subjected it to specific restrictions, provided for the erection of a suitable building, and directed an annual appropriation not exceeding \$25,000, for the gradual formation of a library, it proceeded to declare that of *any other moneys accrued, or to accrue as interest on the fund*, not otherwise appropriated nor required for the purposes therein provided, the managers were thereby “authorized to make such disposal as they shall deem best suited for the promotion of the purposes of the testator, anything therein contained to the contrary notwithstanding.”

Beyond any reasonable controversy, here is a discretionary and controlling power given to the Board of Regents over the whole income of the fund, except only such portion of it as had been appropriated, or should be required for purposes provided by the act. To determine the extent of this discretionary power, it becomes necessary then to ascertain what appropriation had been made, and what purposes were provided by the act.

It directs the selection of a lot and the erection of a suitable building, but does not limit the amount of expenditure, nor make any appropriation for it. It provides “that in proportion as suitable arrangements can be made for their reception,” the several objects specified in the 6th section shall be delivered to the order of the Board of Regents, and requires the arrangements and classification of them.

It directs the regents to appropriate “from the interest of said fund a sum *not exceeding* an average of \$25,000 annually for the gradual formation of a library, and then places the whole residue of the increase of the fund at their disposal. Can this be doubted? For the various purposes provided by the act no appropriations are made. The library forms the only exception, and the sole limit of the discretionary power of the regents over appropriations for a library is, that they shall not exceed an annual average of \$25,000. Within that limit their discretion is full and entire. Suppose any appropriation made in any given year for the gradual formation of a library, can any one doubt that the

regents have the power to make such an appropriation, or so to limit it? And is there any reason why they might not limit the appropriation to a still smaller sum? They might, indeed, be liable to the charge of evading the law, if those appropriations were for mere nominal sums, so that in the course of a series of years no sensible progress could be made in the gradual formation of a library. But this is an extreme case, from which no argument can be drawn against their discretion to limit the appropriation for a library, while intending in good faith to provide for its gradual formation.

Then suppose them to apply an amount sufficient to meet all the expenses necessarily resulting from the provisions of the act, still there would remain a considerable sum not applied to any purpose. If the Board of Regents believe that its application to scientific researches and their publication be "best suited for the promotion of the purposes of the testator," can it be doubted that they would have the right so to apply it?

The ninth section of the act gives this power in full. When they have met the current expenses of the institution, from time to time made the necessary appropriations for the buildings in process of erection, and, exercising their discretion within the limit prescribed to them, have made an annual appropriation for a library, what remains is placed at their "disposal," to promote the purposes of the testator by the use of such means as "they (the Board of Regents) shall deem best suited" to accomplish this object. In construing the act of Congress the committee confine themselves to the act itself—to the plain import of the terms in which it is expressed, and to the necessary results of the provisions which it contains. They do not resort to what is called its parliamentary history. The reported speeches of members upon the bill while pending in Congress, and even votes upon amendments made or rejected, do not answer this purpose. The first only disclose the individual opinions of the speakers—the second frequently do not exhibit the object of those who voted for or against the particular amendment. A speech made by one member is often at variance with the views of those who unite with him in voting for a particular provision. They frequently sustain it on other and different grounds. So too the majority or intermediate vote is frequently composed of the friends and opponents of the bill; the latter advocating a particular amendment with the hope and on the belief that it will prove an incumbrance to the measure in the view of some of its advocates, and thus contribute to its defeat; or they may think that a particular proviso proposed to be stricken out is unnecessary as being comprehended in some other part of the act.

A careful scrutiny of the proceedings of the House of Representatives, while this law was pending before them, would show how unsafe a guide the resort to the parliamentary history of a bill would be in the ascertainment of its true construction. This may reconcile us to an adherence to those rules which the wisdom of ages has devised for the interpretation of statutes. We are endeavoring to ascertain the powers and duties of the Board of Regents, and to do this we seek to discover the true interpretation of the act of Congress and the will of Mr. Smithson, which, taken together, confer their powers and prescribe their du-

ties. These two sources of power and duty are spoken of as necessarily connected; for, although the Smithsonian Institution was created by act of Congress, and will cease to exist whenever Congress shall think proper to repeal that act, yet both Congress and the institution, so long as it continues to exist, are bound to carry the intention of the testator into effect.

The trust has been accepted by Congress in behalf of the United States, and the faith of the United States has been pledged for its faithful execution "according to the will of the enlightened and liberal donor." While, therefore, Congress, acting as agents of the United States, have the power to divert the fund to purposes other than those which may be according to "the will of the liberal and enlightened donor," their right to do so can never be affirmed; and though the Board of Regents cannot and do not claim a right to place themselves in an antagonistical position to the Congress of the United States, whose sub-agents they are, yet in construing the act of Congress, if it will admit of two constructions, one of which seems to be most conformable to the purposes of the will of Smithson, the regents would not hesitate to accept such construction in preference to the other, which does not conform to the will of the testator. This is merely the application of a principle universally recognized in the interpretation of statutes.

In the present case two constructions are given to the act of Congress. If the Board of Regents consider one of them to be more consonant to the purposes of Mr. Smithson's will, which was the source of the authority of Congress to legislate on the subject for any purpose, it ought to be adopted, since the act was passed evidently for the purpose of carrying into execution "the will of the donor," and especially when this interpretation affects two provisions of the act, which otherwise would be without object or operation.

The committee will now proceed to inquire whether the scientific researches, and the publication of their results, are, in the language of the act of Congress, "best suited to promote the purpose of the testator." The question is between such researches, made and published at Washington, or examined under the authority of the institution, and circulated throughout the civilized world, and a great national library, to be established in this city. Mr. Smithson was a scholar, a man of science, an author of scientific memoirs, a contributor to the transactions of the Royal Society of London, familiar with the language in which his will is written, and perfectly competent to decide upon the aptitude of words to convey the ideas they were intended to express.

It might well be expected that the language of such a man would be characterized by simplicity, by the absence of circumlocution and *periphrasis*, which is well described as the use of many words to express the meaning of one. If he had intended to furnish to the people of the United States, and especially to the citizens of Washington, a great library, comprehending all that was then known in every department of human knowledge and culture, he would have said so in terms not to be misunderstood. The committee cannot doubt that if he had merely designed to provide for the purchase of books, to become, through the agency of the United States, the founder of a library, he would have used the simple language appropriate to such an intention.

He would have said: "I bequeath the whole of my property, subject, &c., to the United States of America, to found, at Washington, a library, under the name of the Smithsonian Library."

It is difficult to believe that any man having such an object in view would have abandoned the plain, simple, intelligible language in which no difference of construction could, by any possibility, have arisen, and have substituted for it the sentence which is found in his will, namely: "To found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men."

Again, Mr. Smithson was, as the committee have before said, a man of science, the author of scientific memoirs, a member of the Royal Society, and a contributor to its transactions. What is more natural than that such a man should, when about to pass away from the scene of action, dedicate his property to the continued prosecution of those researches to which his life had been principally devoted. The words of the bequest are strongly corroborative of this view. It is for the "increase of knowledge," not merely for the acquirement of that which now exists. A library would subserve the latter purpose, but could only indirectly aid in the accomplishment of the former by enabling those who had mastered its contents to do what the Board is now doing, namely—to prosecute researches for the *increase of knowledge*. But the terms of the bequest require not merely that it should be applied to the increase of knowledge, but also to its *diffusion*, and to its diffusion **AMONG MEN.**

The benevolent purposes of Mr. Smithson were not limited to the citizens of Washington, nor yet to the people of the United States. They had a far wider scope. A man of science belongs exclusively to no particular country. He is in one sense a cosmopolite, at home in all places where the votaries of science dwell, and under every clime they are the objects of his benevolence. They are *men* among whom he desires the *increase and diffusion of knowledge*.

And he has provided for this in his will. How could a vast library established here accomplish this object? At most it would be accessible to the people of Washington, to casual visiters, and to those who came here for the purpose of consulting its volumes. How infinitely short would this fall of the purpose of the testator, which was first the *increase* and then the *diffusion* of knowledge among men of whatever country or whatever clime.

If a national library be a national want, who should supply it? Can not Congress, which represents a population of twenty-five millions, with resources almost incalculable, and with a treasury not exhausted or impoverished, but overflowing with revenue? Can it not spare out of this abundance whatever may be necessary? Is it not now supplying that want in the great library of Congress, to which in the last three years they have appropriated more than *ninety thousand dollars*? It is accessible now to every scholar who may be at Washington, and will in a few years be so increased under the policy of its present administration as to supply many of the wants of the student and the scientific investigator. Shall a nation such as ours depend for this na-

tional want upon the bounty of a stranger? The generous impulse of the American heart will quickly prompt the answer—no.

The resolutions of compromise, as they were called, to which the committee have before alluded, were repealed by the Board of Regents before the period when by their terms they were to go into operation. What has been already said will show that the committee think that they were properly repealed. Their effect was to tie up the hands of the Board of Regents, to deny to the successors of those who passed them the exercise of that discretion with which the law invested the Board, and thus to defeat the act of Congress by taking away that discretion in regard to the disposal of the fund which the law made it not only the right but the duty of the regents to exercise. Nor can there be any breach of faith in this repeal. The faith which the regents owe is to the law and to the purpose of the will of Smithson, and any arrangement of their own which should restrain them from promoting this purpose by the means which they deem best suited to it, would itself, in the opinion of the committee, approach more nearly to a breach of faith.

The regents, by pledging their faith to one another, cannot escape from the obligation to apply the funds at their control to the objects which they deem best suited to promote the purpose of the testator. The act of Congress, according to the plain import of its terms, authorizes the Board of Regents to employ all monies arising from the income of the endowment not therein appropriated nor required for the purpose therein provided, in such manner as they shall deem best suited for the promotion of the "purpose of the testator," namely, "the increase and diffusion of knowledge among men," and this authority is rendered incontestible, in the judgment of the committee, by the concluding clause of the section which empowers the Board of Regents to exercise their discretion in the disposal of the surplus income, "ANYTHING HEREIN (in the act of Congress) CONTAINED TO THE CONTRARY NOTWITHSTANDING."

This grant of the power imposes the obligation to exercise the discretion which it confers. Judicial tribunals would never reverse the construction of a statute, the terms of which were so plain and unmis-takeable, by what is at all times dangerous, a resort to speeches made by a few of the lawgivers who framed it, or the votes of members actuated by motives beyond the scrutiny of the expounder. Looking, therefore, to the act of Congress itself, which, as was said by a senator in a recent discussion, is best construed "by the examination and comparison of its various provisions and the admitted purpose of its enactment," the committee found no difficulty in coming to these conclusions on this point. They find in the law directions to the Board of Regents to erect, on a liberal scale, a building in which can be arranged collections of natural history, a geological and mineralogical cabinet, a museum, a library, chemical laboratory, gallery of art, a lecture room; and, of course, to use these various means of *increasing knowledge* in the manner and for the purpose to which they are adapted, and for which they are required. In effect the law says: "All other portions of the income dispose of as you may think best calculated to promote the purpose of the testator." A larger discretion can hardly be conceived.

It is absolutely unlimited in relation to every one of its objects except a library, and to this the appropriations which the regents are authorized to make are limited to a maximum amount which they are not at liberty to exceed. It would seem to be most singular, if this had been the primary and cherished object of Congress, that it should be the only one subjected to such a limitation.

It might be thought, if this had been their primary purpose, that the restrictions would have been imposed upon the appropriations for other objects, leaving that for the library unfettered. If we turn from the act of Congress to the will of Smithson to determine the manner in which the trust should be executed, if we look to his antecedents and find that he was himself a searcher into the mysteries of nature which science is laboring to develop—not so much employed in studying the pages of those who have written as striving to read the unwritten pages of nature's book—if we consider the plain and obvious import of the simple language in which his wishes are expressed, and contemplate the benefits to result from one or the other scheme of appropriation which have been in controversy, if we consider these things, we cannot doubt that it is both the right and the duty of the regents, resulting from the will of Smithson, and enjoined by the act of Congress, to appropriate such portion of his funds as they can advantageously employ in scientific researches and the publication and circulation of the results “among men” wherever men exist capable of appreciating them, while, at the same time, they apply another portion of the fund, according to a sound and honest discretion, to the particular purposes specified in the act.

Thus they will not depart from any plan devised by Congress and described in the act, as Mr. Choate seems to have erroneously supposed, but will fill up and develop that very plan, of which only some of the outlines were sketched in the law.

It would be impracticable, within the limits proper to this report, to go into the examination of the minute outline of organization of the institution submitted to the Board of Regents by the secretary, and approved by them. It will be found reprinted in detail in the appendix to the eighth annual report of the Smithsonian Institution, published by Congress in 1854.

A brief notice of the plan, and of its results, is all that we can here present.

The object of the plan is, first: To increase knowledge by stimulating original research by the rapid and full publication of results; by aid in procuring the materials and appliances for investigation; and, if necessary, by direct rewards.

Experience has shown that no other means are so effective in stimulating research as the rapid publication of results; not in a stinted form of abstract, and without illustrations, (too often the necessary condition of the publication of scientific labors,) but in full, with illustrations drawn, engraved, and printed in the best style of art. How many investigations are stopped for the want of instruments, of specimens, and general appliances for research? How many are laid aside, because, first of all, men must live? What more noble or useful object for the Smithsonian Institution than to remove these difficulties from

the path of genius? What more consonant to the intention of the founder? An expedition is setting out, and instruments are required to investigate the magnetism of the earth, the temperature of the ocean, the climate, soil, and productions of places explored, their latitudes and longitudes, heights, &c. These instruments are lent or furnished by the Smithsonian Institution, and the results obtained with them become public property. Means are furnished to explorers to make collections of minerals and ores; of plants and animals; of fishes, reptiles, and insects; and to provide for their transportation from the field. These collections are submitted to the most successful cultivators of the branches of science to which they belong: to men who have made these objects their especial study, and their investigations are made public. The specimens are returned to the Smithsonian collections to be taken care of, and, perhaps, to be re-examined at some more advanced period. By these and similar modes research is stimulated. The provision of meteorological instruments, and of instructions for their use; the collections of the observations made, and their comparisons, have already furnished most important information in regard to the climate and storms of the United States, and the full publication of the results will enable men of science, of this and other countries, to draw from these materials most valuable inferences and laws.

2. To *diffuse knowledge*, by the publication of the contributions, from researches and explorations, of reports on treatises on different subjects or branches of science and its application, of reports showing the history and progress of these subjects or branches, is the second object of the "active operations." These publications diffuse among men the knowledge obtained by the agency of the institution, or from without. The subjects which have been already embraced in the Smithsonian Contributions, and in the different volumes of reports, &c., have been numerous and well distributed among the various branches of knowledge, the abstract and the practical. The publications are widely scattered among the institutions of this and of other countries, given to them or exchanged for their proceedings, transactions, or other publications, and accessible at moderate rates to individuals. Of the impression made abroad by the Smithsonian Contributions to Knowledge the learned professor of Greek of Harvard University thus speaks:

"CAMBRIDGE, MASS., June 30, 1854.

"I have but recently returned from Europe, and I now desire to acknowledge the service you did me by your circular letter of introduction to the librarians of the European establishments, which are in correspondence with the Smithsonian Institution. Wherever I presented it I was received with great kindness and attention, and had the opportunity of seeing whatever was curious, interesting, and valuable, in the libraries and collections.

"It gave me pleasure to notice the high estimation in which the Smithsonian Institution, under its present management, is held everywhere in Europe. The volumes published under its auspices have done the highest honor to American science, and are considered most valuable contributions to the stock of knowledge among men. They are shown to visitors as among the most creditable publications of the

age, and as highly interesting illustrations of the progress of science and the arts in the United States; and the eagerness to possess them is very great among the savans of the Old World. They were shown to me wherever I went, and the commendations bestowed on the civilization of America, as evinced by the excellence of these works, both in matter and form, was deeply gratifying to me. The last time I had an opportunity of seeing them was in the university library at Athens; the librarian pointed them out to me, and expressed the greatest anxiety to complete the set, one or two volumes of which were wanting."

The publications thus approved bring to the Smithsonian Institution a return of works published by the learned societies of the world and by governments such as could not be procured in any other way, supplying the library with rich productions of both literature and science. The gradual formation of a valuable library would result from this system of international exchanges even without direct purchase.

The programme of organization of the institution and its execution have met with the unqualified support of a very large majority of the scientific and literary men of our country, expressed individually or in the associations of which they are members. This is general throughout the Union, and from no quarter have more decidedly favorable opinions been expressed than from that to which the regent at whose instance this investigation has been made (Mr. Choate) belongs. The committee must necessarily be brief in its selections from the numerous letters and other communications before it. In speaking of the general considerations proposed by Professor Henry as guides in adopting a plan of organization, a committee of the American Academy of Arts and Sciences of Boston say, that "they command the entire assent of the committee," and proceed to discuss favorably the various provisions for the increase and diffusion of knowledge furnished by the programme. This committee consisted of such scholars as Everett, Sparks, and Longfellow, and such men of science as Peirce and Gray.

Since the appointment of this committee, Professor Peirce, of Harvard university, has renewed his testimony to the wisdom of the plan of organization, and has spoken further in relation to the efficiency of its execution. In a letter addressed to the chairman of this committee, he says:

"Of all men, none can be more sensible of the value of the great storehouses of the wisdom of past ages than they who are obliged to resort to them in the development of their own researches. The knowledge which has already been given to the world, and which is accumulated in the library, stimulates and invigorates the mind for original thoughts, and supplies important materials for investigation; it is to the author what the collection of models in the Patent Office is to the inventor; but, nevertheless, the increase of knowledge depends chiefly upon the native vigor of intellect, and its diffusion is performed by the press. To the strong mind the collections of the Vatican are a golden opportunity, richer than the mineral harvest of California; but not richer than the hills and streams which abound within every man's

sight; not richer than the stone beneath our feet, on which is written the history of the world; than the leaf of the forest, on which is inscribed the thought of its Creator; or than the cloud in the lightnings, of which the laws and the glory of God are as distinctly revealed to the faithful of the present generation as they were upon Mount Sinai.

"The valuable contributions to knowledge which have already been made by the Smithsonian Institution, are a living proof that vast libraries are not necessary to the development of new thoughts. If you will compare these memoirs with the scientific productions of the same period in Europe, you may find them perchance inferior in erudition, but not in profoundness and originality of thought. Do you believe that Smithson, who was himself engaged in chemical investigations, could have intended a library by his words "an institution for the increase and diffusion of knowledge among men?" If you will examine his nine memoirs to the Royal Society, of which he was an active member, and his eighteen other contributions to science, you will not find one of them which required a library for its production. Each was the natural growth of a deeply thinking mind. Smithson was emphatically a maker, and not a collector of books; and in the scientific circle to which he belonged, the ordinary use of language would have totally precluded the interpretation which some men of quite a different cast of mind have presumed to impose upon his words. Expand his largeness of expression to its utmost extent; include in it all that a generous mind like his own would desire it to embrace; but let it not be cramped and twisted out of shape, and so forced from its original design that it shall wholly fail to accomplish the object of the munificent testator.

"Most earnestly, then, in the name of science, and especially of American science, do I protest against such a gross perversion of this important trust. I assure you, sir, that the great body of scientific men throughout the country warmly approve Professor Henry's plan of conducting the Smithsonian Institution, and regard it as a faithful exponent of the almost undivided opinion of scientific and learned men as to the proper execution of Smithson's will and the law of Congress."

Professor Agassiz, also of Harvard University, Cambridge, whose fame as a naturalist is second to that of no man living, has given, in a letter to the chairman of the committee, the strongest expression of his favorable opinion of the working of the institution. The committee has space here only for an extract from the letter referred to:

"Smithson had already made his will and left his fortune to the Royal Society of London, when certain scientific papers were offered to that learned body for publication. Notwithstanding his efforts to have them published in their transactions, they were refused; upon which he changed his will and made his bequest to the United States. It would be easy to collect in London more minute information upon this occurrence, and should it appear desirable, I think I could put the committee in the way of learning all the circumstances. Nothing seems to me to indicate more plainly what were the testator's views respecting the best means of promoting science than this fact. I will not deny the great importance of libraries, and no one has felt more keenly the want of an extensive scientific library than I have since I have been in the United

States; but after all, libraries are only tools of a secondary value to those who are really endowed by nature with the power of making original researches, and thus increasing knowledge among men. And though the absence or deficiency of libraries is nowhere so deeply felt as in America, the application of the funds of the Smithsonian Institution to the formation of a library, *beyond the requirements of the daily progress of science*, would only be, in my humble opinion, a perversion of the real object of the trust, inasmuch as it would tend to secure facilities only to the comparatively small number of American students who may have the time and means to visit Washington when they wish to consult a library. Such an application of the funds would indeed lessen the ability of the Smithsonian Institution to accomplish its great object, which is declared by its founder to be the increase and diffusion of knowledge among men, to the full extent to which they may be spent, to increase unduly the library.

"Moreover, American students have a just claim upon their own country for such local facilities as the accumulation of books affords.

"If I am allowed, in conclusion, to state my personal impression respecting the management of the institution thus far, I would only express my concurrence with the plan of active operations adopted by the regents, which has led to the publication of a series of volumes, equal in scientific value to any productions of the same kind issued by learned societies anywhere.

"The distribution of the Smithsonian Contributions to Knowledge, has already carried the name of the institution to all parts of the civilized world, and conveyed with them such evidence of the intellectual activity of America as challenges everywhere admiration; a result which could hardly be obtained by applying the resources of the institution to other purposes."

3. *Additional legislation.*

From what has been already said, it may well be inferred that the committee have been unable to see anything either in the provisions of the law, or the administration of the institution, which requires reform by additional legislation. Indeed, they could not have imagined on what ground additional legislation could be demanded, if they had not been informed by the Hon. Mr. Meacham, who presented the resolution under which the committee was appointed. That gentleman was invited to attend the meetings of the committee, was authorized to present charges and specifications upon any branch of the subject referred to them, as also to direct summons for witnesses, and to conduct the examination whenever he desired to do so. He pointed out only two particulars as requiring additional legislation.

The first was, "that additional legislation was needed to secure impartiality towards authors who apply for the publication of their researches." No instance of partiality or injustice in this respect has been brought to the notice of the committee by proof or by allegation. The idea seems to have been advanced for the first time by one of the assistants of the secretary (Mr. Jewett) in a communication addressed to a special committee of the regents in the year 1854.

The argument there made by Mr. Jewett has been abbreviated by Mr. Meacham, and may be stated as objecting that the power of ac-

cepting or rejecting a memoir presented for publication is virtually in the hands of one man.

The practice of the Royal Society of London is stated as being far preferable. On this point the committee would remark that the same plan cannot be adopted by the institution because, as the committee has been informed, it has no fellows from whom an examining council of twenty-one members may be selected. And if the plan could be adopted the committee do not think it as good as the one which the regents have chosen. In the present state of knowledge the several branches can scarcely be represented by twenty-one individuals, and it may occur in case of a particular paper that not a single member of the council is fully competent to decide upon its merits. The institution is not thus restricted, it has at its command the learning of the whole country, and is not even confined in its choice of examiners to men of science at home, but can select them from distinguished individuals abroad.

The rules adopted by the regents are in this respect few and simple, and in the opinion of the committee sufficient. They have provided in their programme of organization as follows:

1st. No memoir, on subjects of physical science, to be accepted for publication which does not furnish a positive addition to human knowledge, resting on original research; and all unverified speculations to be rejected.

2d. Each memoir presented to the institution to be submitted for examination to a commission of persons of reputation for learning in the branch to which the memoir pertains; and to be accepted for publication only in case the report of this commission is favorable.

3d. The commission to be chosen by the officers of the institution, and the name of the author, as far as practicable, concealed, unless a favorable decision be made.

It will be perceived that there is nothing like a "star chamber of science" in this part of the plan of the institution. The opinion of the commission is formed upon the merits of the work or paper, and cannot be affected by partiality for or prejudice against the author whose name is unknown to them.

If any author should feel himself aggrieved by the appointment of an incompetent or prejudiced commission, he will have no difficulty in presenting a complaint to the Board of Regents by whom another commission may be named. In fact, no well founded complaint on this score has yet been made so far as has been shown to this committee, and the danger complained of seems to them only speculative and fanciful. The Board of Regents have full power to remedy whatever may be wrong in the practical working of this part of the plan, and it will be time enough to ask the interference of Congress when the evils which are now only conjectural shall be realized.

2d. Mr. Meacham suggests, "that the institution should be placed in such a position that legal redress may be gained by those who are improperly deprived of their rights."

It is true that the institution is not a corporation capable of suing or being sued. But no practical evils have as yet resulted from the refusal of Congress to make the establishment an incorporation. It is a

peculiar establishment. Its operations are simple and few. Its contracts are such as can seldom form the subject of controversy. If the institution should find necessity for legal redress, there is nothing to prevent the President, who is a member of the establishment, from directing a suit in the name of the United States. If it denies legal rights to any officer or other person, the same remedy exists as in any other case of claim against the United States. No instance of a denial of legal right has been shown to the committee. An attempt to do so was indeed made on the part of an employee of the institution, who claimed to be entitled to larger compensation than had been paid to him. But the attempt was a signal failure. His own receipts contradicted his claims, and satisfied the committee that he had been paid all he could legally demand; and the assertion of extraordinary merit in his labors, alleged as an equitable ground of claim, failed when a resort was had to testimony other than his own.

The committee therefore conclude that there is no necessity for additional legislation.

4. *Maladministration.*

The first of Mr. Meacham's complaints under this head is "that the regents have made the secretary the organ of communication between them and the other officers of the institution, cutting off other officers from direct official intercourse with the Board, neglecting or refusing to procure or make by-laws defining the position and power of persons employed in the institution, and expressing the opinion that all the assistants are removable at the pleasure of the secretary."

This complaint seems to be founded on an entire misapprehension of the act of Congress creating the institution, and the proper relations of the secretary and his subordinates. By the act of Congress the secretary is the sole administrative officer of the institution. The other officers are not only his subordinates, but are nothing more than *his assistants*, who are employed to assist him in his duties because it is physically impossible for him to perform all of these duties himself. The law charges the secretary alone with the duties enumerated, and therefore devolves upon him the sole responsibility, unless when it is shared with the executive committee of the regents, whose functions are not precisely defined in the law, but who act as a Board of control or council to the secretary. We adopt on this subject the reasoning of the special committee of the Board of Regents, in their report of the 20th of May last, as follows:

"The law is declaratory and positive in charging the secretary with the enumerated duties, and therefore invests him, and him alone, with the corresponding powers. But as it must have been manifest that no secretary could be able of himself to perform personally everything required for the discharge of his enumerated duties, provision is made for aid to him in the clause which says that he 'may, with the consent of the Board, employ assistants,' &c.

"The positions of the persons so employed are determined by the word which designates them in the clause authorizing their employment. They are called 'assistants.' To whom? Not to the regents, but to the secretary. Their position is necessarily subordinate; and, as their duties are those of assistants to their principal, they can no

more be independent of him than they can be superior to him. This construction is so manifestly proper that it would seem to require no argument to justify it. But if anything further were wanted, it may be found in the fact that the secretary is to employ them in and about that very business with which he is charged, and for which he alone is responsible. The character of this part of the section is permissive. He is not required to employ any one, but is permitted to employ persons to assist him, provided he satisfy the Board that their services are necessary as aids to him.

"In another part of the same section provision is made for the payment and, if need be, the removal of the secretary and his assistants, and in this connexion they are spoken of as officers, but by no ingenuity of construction can that word, in this connexion, be held to assign them special duties, or confer any separate authority.

"Thus careful has Congress been to provide an efficient system of operations, which can only come from harmony of purpose and unity of action.

"This view of the intention of Congress, so clearly expressed in the law, would be directly contradicted by the plan which has been suggested, of organizing the institution definitely into several departments, placing at the head of these departments different assistants, establishing their relative positions, prescribing distinct duties for them, assigning certain shares of the income to be disbursed by them, and stating their authority, privileges, and remedies for infringement of their official rights, or of the interests intrusted to their care. All this would tend, not to secure a loyal and harmonious co-operation, to a common end, of the assistants with the secretary, but to encourage rivalry, to invite collision, to engender hostility, to destroy subordination, to distract the operations of the institution, to impair its efficiency, and to destroy its usefulness."

This view of the question has been made very clear to the committee in the course of the examination which they have made, and by the testimony taken for the purpose of supporting Mr. Meacham's charges. All the difficulties in the institution, which have resulted in the dismissal by the secretary of one of his assistants and of a person temporarily employed upon the meteorological computations, seem to have arisen from the desire of independent positions, engendering rivalry and hostility, producing collisions and insubordination utterly incompatible with the proper authority of the secretary and the harmonious action so necessary to the welfare of the institution. The facts developed in regard to those difficulties entirely satisfy your committee that it is not desirable to have such by-laws as Mr. Meacham thinks the regents should have made or procured.

If any just cause of complaint by the assistants against the secretary should arise, they can at all times resort for redress to the regents, by memorial or other proper form of application, and the patience with which such an application, although entirely without cause, has been heard by the executive committee, to which it was referred, and considered by the regents, is quite sufficient to show how needless for the purpose any by-laws are.

It may be proper to say, that the only section of the law in which

by-laws are mentioned is the 8th, which seems to confer the power of enacting them upon the members of the establishment, who are the President and Vice President of the United States, the members of the cabinet, except the Secretary of the Interior, (whose department was not created at the date of the act,) the Chief Justice of the United States, the Commissioner of Patents, and the mayor of Washington, with "such other persons as they may elect honorary members."

The regents have expressed the opinion that the secretary has power to remove the assistants. This opinion is expressed in the following resolution adopted in July last:

"Be it resolved, That while power is reserved in the said (7th) section to the Board of Regents to remove both the secretary and his assistants, in the opinion of the Board power nevertheless, remains with the secretary to remove his said assistants."

In this opinion the Chief Justice of the United States and Mr. Berrien, who was absent when the resolution was passed, afterwards expressed their full concurrence.

The committee cannot doubt that it was a sound opinion. The law, as before stated, makes the secretary the sole administrative officer of the institution. He, and he alone, is keeper of the museum and librarian. The law puts all the property of the institution into his charge, and authorizes him alone to appoint assistants to aid him in the discharge of the duties devolved upon him. Had the act made no further provision on this head, there could not be a doubt that the power of removal would be in him; because it is an established principle, that when the power to appoint is conferred, the power of removal is incident to it, unless restrained by some other provision. There is another clause in the same section (7th) which applies as well to the secretary as to his assistants, which provides, that "the said officers shall be removable by the Board of Regents, whenever, in their judgment, the interests of the institution require any of the said officers to be changed."

Under this clause, the question arises, whether it restrains the incidental power of the secretary to remove, or whether, in addition to that incidental power, it gives, as regards the assistants, the authority of the Board to make such removal. Your committee think the latter the sound construction. It does not restrain the power of the secretary by express words or by necessary implication. It is true that the clause gives to the Board superior power, inasmuch as they may remove an assistant without the concurrence of the secretary, and even against his wish. But this power may well exist without conflict with the incidental authority of the secretary. The same reasons which cause the secretary to be invested with authority to appoint, justify, and require his power to remove. The Hon. George M. Dallas, late Vice President of the United States, and chancellor of the institution, adopts this view, and, in an opinion upon this subject, says: "It is clear that the act of Congress does not confer upon the Board of Regents the power to appoint the assistants of the secretary, and for reasons too palpable to require mention. But if the secretary has not himself under his own mere motion a right to remove, it would be impossible to imagine

reasons why the power of original appointment was not given to the Board."

"In other words, the reasons which excluded the Board from appointing, are identically the reasons which preserve to the secretary the power of removing. It may, perhaps, render it more perspicuous to add that these reasons are the official responsibilities and practical personal intercourse of the secretary with his assistants."

Besides, it is very evident that the interests of the institution might often be in peril if the power of removal were denied to the secretary.

The Board of Regents are not in session during a great part of the year. Many of them reside at great distances from Washington, and could not be assembled without much inconvenience to themselves and heavy expense to the institution. During this period it might be of the utmost importance to remove an unfaithful assistant. He might cease to do that for which alone he was appointed, to assist the secretary in the affairs of the institution. He might refuse to deliver up to the secretary the property of the institution which the law puts in *his* charge. He might threaten and intend to destroy it, might treat the secretary with personal indignity, and insult and defame the regents, and spread insubordination throughout the institution. For such conduct there would be no prompt and adequate remedy unless the secretary possessed the power of removal. One case of this kind has already occurred. A person in the employment of the institution has refused to deliver up certain papers, the property of the institution, and threatened to destroy them. He has also written a letter, which was published over his own signature in a New York paper, vilifying the secretary and several of the regents, by name, in the most abusive language. For this and other causes during the last recess of Congress he was removed by the secretary, and, as the committee cannot doubt, most justly removed. This very individual was the principal witness against the secretary on the examination before your committee.

We think that the resolution of the regents, above quoted, while maintaining the superior authority of the Board, properly asserted the power of the secretary.

Your committee regret very much to say that the secretary was also justified in the removal of Mr. Jewett. His removal was not arbitrary, unjust, and oppressive. Mr. Jewett is a man of talent and scholastic attainments, but it is evident, from his own testimony, that he considered himself as holding an antagonistic position to the secretary, as "having charge of the library, and being considered by the public as the representative of that interest in the institution." He construed the law in one way; the secretary construed it differently. He thought and said that it would be treachery in him to co-operate with the secretary according to the latter's construction of the law. He told the secretary, in effect, that if he attempted to annul the compromise in the way he proposed, he would shake the institution to its centre. It is evident that he was impatient of the restraints of a subordinate position, and entertained feelings towards the secretary which made their harmonious co-operation impossible. In a paper which he submitted to the special committee of the regents he assailed the motives and honor of

the secretary and criticised harshly and unnecessarily the reports of that officer.

So the special committee of seven regents, with one exception, reported to the board, declaring that this paper disclosed feelings of excessive hostility and insubordination. After this, it was manifest that the common civilities of life could not be exchanged between them, and the interests of the institution required their separation. The Board of Regents accordingly passed a resolution, in January last, approving of Mr. Jewett's removal.

Mr. Meacham also charged the secretary with claiming and exercising the right to open and read letters directed to his subordinates. The evidence satisfied the committee that the secretary neither claimed nor exercised any improper authority in this respect. He expressly disclaimed any desire or authority to inspect the private letters of his subordinates. Their correspondence, in regard to the business of the institution, he properly claimed to be entitled to examine and control. In the absence of the subordinates he did consider himself at liberty to open letters addressed to them which were evidently of an official character; but it does not appear that he actually exercised this authority, the claim of which seems to have been misunderstood by one of his assistants, and grossly perverted by another person, under the influence of hostile and unjustly suspicious feelings.

The charge of denying scientific right and refusing to take full measures for adjusting the claim of Mr. Blodget was entirely refuted, both by documentary evidence and the testimony of a disinterested party.

These latter charges of maladministration seemed to your committee not to come precisely within the scope of the instructions of the resolution under which the committee was appointed. The Board of Regents might properly have investigated them, and undoubtedly would have done so if asked by the parties concerned. But as testimony was taken in relation to them, the committee feel bound to say, that they have not been sustained; and that they consider the secretary as entirely relieved from the charge of maladministration in every particular. They believe that the regents and the secretary have managed the affairs of the institution wisely, faithfully, and judiciously; that there is no necessity for further legislation on the subject; that if the institution be allowed to continue the plan which has been adopted, and so far pursued with unquestionable success, it will satisfy all the requirements of the law, and the purposes of Smithson's will, by "increasing and diffusing knowledge among men."

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